No. 80-1354

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In The

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 241, AFL-CIO,
PETITIONER

-VS-

ASSOCIATION OF SCIENTISTS AND PROFESSIONAL ENGINERRING PERSONNEL

-AND-

RCA CORPORATION

BRIEF OF ASSOCIATION OF SCIENTISTS AND PROFESSIONAL ENGINEERING PERSONNEL IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision below ordering tripartite arbitration of a work assignment dispute among one employer and two competing unions should be affirmed in accordance with the clear policy in favor of tripartite arbitration, especially where no prior final arbitral award would be affected.

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JURISDICTION

The Judgment Order of the United States Court of Appeals for the Third Circuit was issued and entered on October 8, 1980. A timely Petition for Rehearing was denied on November 14, 1980. This Petition for Certiorari was filed less than 90 days from the date of denial. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. §.85(a); Labor-Management Relations Act §301(a).

STATEMENT OF THE CASE

In this case, International Federation of Professional and Technical Engineers, Local 241, AFL-CIO (hereinafter "Local 241") seeks reversal and the Association of Scientists and Professional Engineering Personnel (hereinafter "ASPEP") seeks affirmation of the final order of The Honorable Louis N. Pollak rendered on February 13, 1980 in Civil Action No. 79-222 in which Judge Pollak ordered Local 241, appellee RCA, and ASPEP to proceed to tripartite arbitration in a work assignment dispute.

The relationship among the parties and the facts involved herein are as follows. ASPEP and RCA have entered into a collective bargaining agreement effective July 6, 1977 to July 1, 1980, which contains a recognition clause providing that ASPEP is the sole and exclusive bargaining agent for all engineers as defined in the agreement. Local 241 and

RCA have likewise entered into an agreement, effective June 15, 1977 to June 15, 1981. Local 241 claims that some of the aforementioned engineering work should be assigned to Local 241 members rather than to ASPEP members and filed a grievance to that effect with RCA Corporation. RCA processed that grievance through the arbitration procedure and a hearing was scheduled for September 20, 1978 before Arbitrator Dr. S. Herbert Unterberger, now deceased. The hearing was rescheduled for February 16, 1979. ASPEP, with counsel, appeared at the scheduled arbitration hearing on February 16, 1979 and attempted to intervene, asserting a vital interest in the outcome of the arbitration because the work in question therein had been assigned to ASPEP that ASPEP could not intervene unless it agreed to four ground rules: (1) ASPEP would be bound by a prior award rendered in 1964 by Arbitrator Seibel involving RCA and Local 241 at a location not in-

vo ved in this dispute; (2) ASPEP would be bound by Dr. Unterberger's preliminary or interim award; (3) ASPEP agreed that the dispute was being arbitrated under the Local 241-RCA agreement; and (4) ASPEP would be bound by Dr. Unterberger's final award. ASPEP was and is willing to agree that the final resolution of the dispute would be binding upon it, Local 241, and RCA, provided all parites have a full and fair opportunity to participate in the proceedings but was and is unwi-ling to agree to the first three ground rules. Local 241 would not permit tripartite arbitration unless ASPEP agreed to all four requirements. Thus, ASPEP filed suit in Federal District Court for the Eastern District of Pennsylvania against RCA and Local 241 requesting that bipartite proceedings be enjoined and that unconditional but binding tripartite arbitration be ordered. Thereafter, RCA

counterclaimed and crossclaimed for tripartite arbitration. Subsequently, the parties agreed to postpone any arbitral proceedings pending judicial determination of the issue.

In this context, the parties filed cross-summary judgment motions, argued the case before Judge Pollak, and were ordered by Judge Pollak to proceed to unconditional, binding, tripartite arbitration.

Local 241 appealed to the United States Court of Appeals for the Third Circuit. On October 8, 1980, the Third Circuit affirmed the court below based upon the national labor policy providing for the prompt and orderly settlement of all disputes and the court's traditional policy encouraging arbitration, citing, Transportation Communication Employees Union v. Union Pacific Railroad Co., 385 U.S. 157 (1966); Window Glass Cutters League v. American St. Gobain Corp., 428 F.2d 353 (3rd Cir. 1970); CBS, Inc. v. American Recording & Broadcasting Ass'n., 414 F.2d 1326 (2nd Cir. 1969).

REASONS FOR NOT GRANTING A WRIT OF CERTIORARI

A. The Decision Below Does Not Decide any Novel or Important Question Relating to the Federal Common Law of Labor Relations Which Has Not Been Decided by This Court.

The Decision below merely applies this Court's Decision in Transportation-Communications Employees Union v. Union Pacific R.R. Co., 385 U.S. 157 (1966) to a case brought pursuant to Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. §185(a). In Transportation-Communications Employees, this Court decided that the federal policy in favor of peaceful settlement of labor disputes required that a work assignment dispute arising under the Railway Labor Act be resolved in one tripartite proceeding in which the employer and the two work claimants were to participate. The very same federal labor policy favoring the prompt, expeditious, peaceful resolution of labor disputes applies with at least equal force to cases arising

under Section 301 of the Labor-Management Relations Act. Indeed, every Circuit Court of Appeals which has addressed this issue has so decided. CBS, Inc. v. American Recording and Broadcasting Associates, 414 F.2d 1326 (2nd Cir. 1969); Window Glass Cutters League v. American St. Gobain Corp., 428 F.2d 353 (3rd Cir. 1970); Local 416 Sheet Metal Workers Int'l. Assoc. v. Helgesteel Corp., 507 F.2d (7th Cir. 1974); Louisiana-Pacific Corp. v. Int'l. Brotherhood of Electrical Workers Int'l. Assoc., Local Union 49 v. Los Alamos Constructors, Inc., 550 F.2d 1258 (10th Cir. 1977).

This Court should not divert its attention from more pressing issues merely to articulate the obvious applicability and availability of tripartite arbitration in a §301 suit.

B. The Third Circuit Decision Herein Does Not Conflict with Any Decisions of Other Federal Courts of Appeal.

The Federal District Court for the Eastern District of Pennsylvania held that a 1964 arbitration settlement by Local 241 and RCA approved by Arbitrator Lawrence E. Seibel involving an RCA facility other than the one in which the instant dispute has arisen and that a 1978 interim award by the late Arbitrator Dr. S. Herbert Unterberger had not yet reached a "stage of vestedness" which is "cognate with one's entitlement to rely on the results . . ." (Appendix D to Local 241's Petition for A Writ of Certiorari at 24a). In short, Judge Pollak decided that the prior awards factually were not sufficiently final to impede him from ordering tripartite arbitration. This conclusion is both reasonable and efficacious in light of the fact that the 1978 decision was so interim in nature that Local 241 required additional proceedings as a result of that decision.

Implied in the Third Circuit's affirmation of Judge Pollak is the Circuit's belief that substantial evidence supported Judge Pollak's finding that the previous proceedings lacked finality.

This key factual distinction differentiates the instant case from Louisiana-Pacific Corp. v. International Brotherhood of Electrical Workers, Local Union 2294, 600 F.2d 219 (9th Cir. 1979) and Local 771 I.A.T.S.E. v. RKO General, Inc., 456 F.2d 1107 (2nd Cir. 1977) where final and binding bipartite arbitration awards were held by the Ninth and Second Circuit Courts of Appeal to prevent the issuance of an order to arbitrate the disputes in a tripartite proceeding. Thus, there is no conflict between or among

any Circuit Courts of Appeal to move this Court to review the instant case.

Respectfully submitted,

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Dated: March 12, 1981